IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8663 OF 2004

Nocil R.C.D. Employees Union. .. Petitioner.

Vs.

National Organic Chemicals Industries Limited. .. Respondent

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Shri A.K.Jalisatgi with Shri A.B.Desai for the petitioner.

Shri S.P.Dhulapkar for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 8th December, 2004.

P.C.

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioner-union challenges the judgment and order dated 12th July, 2004 passed by the Industrial Court, Thane, dismissing the Complaint (ULP) No.53 of 2004 filed by the petitioner alleging that discontinuation of the service of non-vegetarian food and sweet dishes in the canteen from 6th February, 2004 amounts to introduction of unilateral

change in the canteen facilities and therefore, there is unfair labour practice adopted by the management in terms of Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971.

3. The Industrial Court, after hearing the parties, has clearly held that there was no agreement between the parties to the litigation obliging on the company to continue to provide service of non-vegetarian food and sweet dishes in the canteen, and secondly that the non-vegetarian service which was provided in the canteen by the company was merely a welfare activity which does not take any shape and status of service conditions of the workers, and that therefore, there is no case of adoption of unfair labour practice as has been alleged by the petitioner. It has also been held that whatever changes which have been brought about in the canteen menu have not been done by way of unilateral act on the part of the company but the said changes have been done pursuant to the unanimous decision of the Managing Committee of the canteen, consisting of the members of the management as well as the workers. It has also been observed that such a practice is being followed from time to time in respect of changes to be brought about in the service of the canteen.

4. It was sought to be contended that it was a specific case of the petitioner that for the last 25 years or more, the company has been providing the food including vegetarian and non-vegetarian food in the canteen accompanied with the sweet dishes in customary concession or privileges, however, the same was totally ignored by the Industrial Court and merely because there was no agreement between the parties, the complaint of the petitioner was rejected. The attention was sought to be drawn to the Rule 84 of the Maharashtra Factories Rules, 1963 in relation to the obligation of the Managing Committee merely to consult from time to time as regards the arrangement of the menus in the canteen. Attention was also drawn to the contents of paragraph 5 of the complaint in relation to the customary concession and privileges claimed by the petitioner in relation to the service of vegetarian, non-vegetarian food and sweet dishes in the canteen.

5. Undoubtedly, the petitioner in the complaint in paragraph 5 has stated that for the last 25 years or more, the company had been providing food including vegetarian and non-vegetarian food in the canteen accompanied with the sweet dishes and such practice

has taken place into customary concession and privileges, and therefore, the respondent/company was not entitled to take unilateral decision to bring changes in the menu thereby discontinuing to serve non-vegetarian food and sweet dishes in the said canteen. However, the fact remains, apart from a mere allegation in that regard in the complaint, the petitioner did not bring on record any material in support of such contention regarding the said practice nor relating to refusal of any customary concession or privileges. The only material which was sought to be placed on record by the petitioner in support of its contention is in the form of agreement Exhibit U.14. The Industrial Court, while analysing the said agreement and the relevant clauses thereof, has clearly observed that the said Exhibit nowhere discloses any agreement to the effect that the company would supply non-vegetarian food and sweet dishes, and in any case, if the company had been supplying such non-vegetarian and sweet dishes since 1975, it was merely in the form of welfare facility and it does not amount to a creation of part of the service conditions. Reliance has also been placed in that regard in the decision of our High Court in **Blue Star Workers Union v. Blue Star Ltd.,** reported in 1990 II CLR 258. Indeed, the Exhibit U.14 merely discloses

that in case, the employee is interested in enjoying his lunch in the canteen, a sum of Rs.34/- would be deducted per calendar month from his salary by way of contribution for such meals availed by him in the canteen. It, however, further states that "the sum of Rs.34/- you will be paying is based on the food price index for the month of August, 1975. In case, the food price index moves up, the company reserves the right to increase your contribution and vice-versa." This apparently discloses that the company has opted to bring about the changes in the menu apart from the fact that the records disclose such changes having brought about after having taken unanimous decision by the canteen managing committee which comprised of the management and the workers.

6. Rule 84(1) of the Maharashtra Factories Rules, 1963 provides that "the Manager shall appoint a Canteen Managing Committee which shall be consulted from time to time as to-

(a) the quality and quantity of foodstuffs to be served in the canteen;

(b) the arrangement of the menus;

(c) times of meals in the canteen; and

(d) any other matter pertaining to the canteen as may be directed by the Committee:

Provided that where the canteen is managed by a Co-operative Society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960, it shall not be necessary to appoint a Canteen Managing Committee."

Obviously, the consultation regarding arrangement of the menu by the Manager with the Canteen Managing committee by itself cannot lead to a conclusion that the company would not be entitled to introduce changes in the items of the menu to be served in the canteen. On the contrary, it clearly discloses that the arrangement regarding menu can be with the consultation of the Canteen Managing Committee which eventually implies that the menu can be changed depending upon the circumstances of each case. Besides, once it is clear that the provision for canteen facilities forms part of the welfare and does not necessarily form part of the service conditions

even in cases of statutory canteens, the food items to be served in the canteen would nonetheless be continued to be welfare facility. The same read with Exhibit U.14 in the case in hand, can be said that such facilities would form part of the service conditions of the petitioner.

7. Viewed from this angle, therefore, no fault can be found with the findings arrived at by the Industrial Court as there was no case made out of unfair labour practice having been adopted by the respondent company under Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 nor there was any change introduced unilaterally by the company. Hence, the petition fails and is hereby dismissed with no order as to costs.

8. C.C. expedited.